

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHV GAS SUPPLY & RISK
MANAGEMENT SAS and EXMAR
SHIPPING BVBA, as owner of the
WAREGEM (IMO No. 9659127)

Plaintiffs,

-against-

OW BUNKER USA INC, OW BUNKER
HOLDING NORTH AMERICA INC., OW
BUNKER NORTH AMERICA INC.,
NUSTAR ENERGY SERVICES INC., and
ING BANK NV,

Defendants.

Case No. 14 Civ. 9720 (VEC)

**STIPULATED ORDER FOR DISCHARGE FROM LIABILITY, DISMISSAL WITH
PREJUDICE, AND DISBURSEMENT OF THE INTERPLEADER FUND**

COME NOW Plaintiff SHV GAS SUPPLY & RISK MANAGEMENT SAS ("SHV"), Plaintiff EXMAR SHIPPING BVBA ("Exmar") as owner of the M/V WAREGEM (IMO No. 9659127) (the "Vessel"), Defendant O.W. BUNKER USA INC. ("OW USA"), and Defendant NuStar Energy Services Inc. ("NuStar") filing their Stipulated Order for Discharge from Liability, Dismissal With Prejudice, and Disbursement of the Interpleader Funds, and would respectfully show as follows:

The Fuel Delivery

WHEREAS, on November 4, 2014, SHV ordered marine fuel ("bunkers") from OW USA to be delivered to the Vessel at the port of Houston, Texas on or about November 4-7, 2014;

WHEREAS, on November 6, 2014, the bunkers were delivered to the Vessel by NuStar (the "Fuel Delivery");

WHEREAS, on November 6, 2014, OW USA invoiced SHV for Fuel Delivery in the total amount of \$521,568.11 (the "Invoice Amount").

The Bankruptcy

WHEREAS, on November 13, 2014, OW USA and its affiliates, O.W. Bunker Holding North America Inc. ("OW Holding") and O.W. Bunker North America Inc. ("OW North America"), each filed *Voluntary Petitions* for relief pursuant to Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Connecticut ("Bankruptcy Court") which were jointly administered for procedural purposes only under the caption *In re O.W. Bunker Holding North America Inc.*, Case No. 14-51720 (JAM) (the "Bankruptcy Action");

WHEREAS, on November 19, 2015, OW USA submitted the *Debtors' First Modified Liquidation Plans* (the "Liquidation Plans") to the Bankruptcy Court;

WHEREAS, on December 15, 2015, the Bankruptcy Court entered an *Order Confirming the Debtors' First Modified Liquidation Plans* (the "Confirmation Order");

WHEREAS, on January 4, 2016, pursuant to the Liquidation Plans and Confirmation Order, OW USA and ING Bank N.V. ("ING Bank") each transferred their interests in respect of the Fuel Delivery to the OW USA Liquidating Trust.

The Interpleader Action

WHEREAS, on December 10, 2014, in connection with the Fuel Delivery, SHV and Exmar filed a *Complaint for Interpleader* in the United States District Court for the Southern District of New York (the "New York Court") in a case captioned *SHV Gas Supply & Risk*

Management SAS v. OW Bunker USA, Inc., 14 Civ. 9720 (the “Interpleader Action”) seeking to deposit the Invoice Amount plus interest into the New York Court’s Registry, discharge SHV, Exmar, and the Vessel from liability relating to the Fuel Delivery, require all defendants to assert claims relating to the Fuel Delivery in the Interpleader Action, and otherwise enjoin all defendants from asserting claims relating to the Fuel Delivery outside of the Interpleader Action;

WHEREAS on December 15, 2014, SHV deposited \$552,862.20, *i.e.*, the Invoice Amount plus an additional 6% or \$31,294.09 (the “First Interest Deposit”), into the New York Court’s registry which, on January 7, 2015, was placed into the New York Court’s interest-bearing Court Registry Investment System (“CRIS”);

WHEREAS, on December 29, 2014, defendant NuStar filed an *Answer* and asserted claims in the Interpleader Action;

WHEREAS, on January 12, 2015, defendant OW USA filed an *Answer* and asserted claims in the Interpleader Action;

WHEREAS, on March 13, 2015, defendant ING Bank filed an *Answer* and asserted claims in the Interpleader Action;

WHEREAS defendants OW Holding and OW North America (collectively, the “Non-Claiming Defendants”) appeared and answered, but did not assert claims in the Interpleader Action;

WHEREAS, on December 13, 2016, SHV deposited an additional 6% or \$31,294.09 (the “Second Interest Deposit” and, together with the Invoice Amount and the First Interest Deposit, the “Interpleader Fund”) into the New York Court’s CRIS; and

WHEREAS, on June 6, 2016, ING Bank was dismissed with prejudice from the Interpleader Action.

WHEREAS the only remaining Defendants-Claimants in the Interpleader Action are OW USA and NuStar;

WHEREAS SHV, Exmar, OW USA (by and through the OW USA Liquidating Trust), and NuStar have executed a confidential General Release and Settlement Agreement dated January 7, 2020 (the "Agreement") with respect to their claims relating to the Fuel Delivery;

NOW IT IS HEREBY STIPULATED AND AGREED, by and between the Parties hereto, that the Interpleader Fund (plus any interest accrued while on deposit) shall be paid to OW USA's attorneys for disbursement in accordance with the Agreement; and it is further

STIPULATED AND AGREED, pursuant to Fcd. R. Civ. P. 41(a), that the above-captioned Interpleader Action is dismissed with prejudice with each of the Parties to bear its own attorneys' fees and costs; and it is further

STIPULATED AND AGREED, that SHV, Exmar, and the Vessel are each discharged from any and all claims with respect to the Fuel Deliveries and that such discharge shall be binding as to all defendants in this Interpleader Action; and it is further

STIPULATED AND AGREED, that this Stipulation may be filed without further notice and, for the purposes of filing this Stipulation, this Stipulation may be executed in counterparts, which, when taken together, shall constitute the entire Stipulation, and that signatures by facsimile and electronic mail should be considered by the Court the same as original signature.

Dated: January 7, 2020
New York, New York

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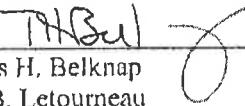
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Attorneys for NuStar Energy Service

SO ORDERED:

The Clerk of the Court shall distribute the Interpleader Fund (plus any interest accrued while on deposit) by check made payable to "Montgomery McCracken Walker & Rhoads LLP as attorneys."

Honorable Valerie E. Caproni
United States District Judge

Dated

